In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-330

DOMINGO RUIZ, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner's sole claim here is that there was not sufficient independent evidence of his participation in the conspiracy to support the admission against him of statements of his co-conspirator.

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiring to distribute and possess heroin in violation of 21 U.S.C. 812, 841(a)(1) and 841(b)(1)(A). He was sentenced to five years' imprisonment. The court of appeals affirmed (Pet. App. A).

The evidence in the case as set forth in the opinion of the court of appeals adequately answers the claim by petitioner that the non-hearsay evidence of his participation in the conspiracy was insufficient. We rely on

that opinion in urging that the petition for a writ of certiorari should be denied.[1]

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

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[1] We note also that the petition for rehearing was denied June 8, 1973, and the petition for a writ of certiorari was not filed until August 22, 1973. It is therefore substantially out of time under Rule 22(2) of the Rules of this Court.

DOJ-1973-10